IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 462 OF 2006

Shri Santosh Narayan
Naik, r/o C-156, Satinganwadi,
Ward No.10, Khorlim, Mapusa,
Bardez, Goa. ... Petitioner

versus

1. The State of Goa through
the Secretary, Home Department,
having office at Secretariat,
Porvorim, Goa.

2. Chief Secretary/Appellate
Authority u/s 7 of the Goa
Maintenance of Public Order
and Safety Act, 1988.

3. Superintendent of Police,
Police Head Quarters,
Panjim-Goa. ... Respondents

Mr. V. A. lawande, Advocate for the Petitioner.

Ms. Winnie Coutinho, Government Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 23RD NOVEMBER, 2006.

ORAL ORDER

Heard the learned Counsel on behalf of the petitioner and the learned Government Advocate on behalf of the Respondents.

2. The short point involved in this petition, filed under Article 227 of the Constitution, is whether the State Government could have preferred an appeal against the Order passed by the District Magistrate in exercise of the powers conferred upon him under the Goa Maintenance of Public Order and Safety Act, 1988 (Act, for short).

3. The Superintendent of Police(North) submitted a report to the District Magistrate(North) with a view to obtain an order of externment against the petitioner under Section 4 of the said Act. The Additional District Magistrate by his Order dated 25-10-2002 found that the reasons assigned on behalf of the Superintendent for the externment of the petitioner were inadequate. The learned Additional District Magistrate was of the opinion that there should be clear and present danger based

upon credible material which should make the movement and acts of the person alarming or dangerous or frought with violence and likewise there should be sufficient reasons to believe that the person being proceeded against was so desperate or dangerous that his mere presence in the locality or in any part thereof is hazardous to the community and its safety. The learned Additional Magistrate after perusing the report came to the conclusion that the cases cited against the petitioner were very old and there were no fresh instances of violence on the part of the petitioner from the year 1995 onwards which gave him a feeling that the petitioner had reformed himself and therefore the learned Additional Magistrate dropped the proceedings.

4. It appears that the Superintendent of Police appealed against the said Order to the State Government and the appeal was heard by the Chief Secretary. The learned Chief Secretary by his Order dated 19-9-2006 reversed the finding of the District Magistrate and ordered the externment of the petitioner for a period of one year. In externing the petitioner, the learned Chief Secretary observed that the case of the petitioner should

set an example to the Society at large that undesirable elements would not be allowed to get away with their criminal activities and take advantage of various loop holes in our system to avoid conviction. He also observed that an order of externment was not so much punitive but a preventive measure for ensuring peace in the Society at large and restoring the confidence of the average citizen in the system.

5. The Goa Maintenance of Public Order and Safety Act, 1988 was enacted by the Legislative Assembly of Goa with a view to provide for the maintenance of public order and safety in the State of Goa. Section 2 deals with definition and clause (a) of sub-section(1) thereof defines the expression "district" to mean a territorial division constituting a district for the purpose of the Code of Criminal Procedure, 1973. Clause (c) defines "person" to include any Company or Association, or body of persons whether incorporated or not and clause (d) defines "State Government" to mean the Government of Goa.

6. Section 7 provides for Appeals against Order under Section 3 or Section 4. Sub-Section (1) thereof provides that any

person aggrieved by an order made under Section 3 or Section 4 may appeal to the State Government or any Officer authorized by the State Government in this behalf(hereinafter referred to as the "Appellate Authority") within thirty days from the date of the service of such order on him. Sub-Section (2) provides that an appeal under this Section shall be preferred in duplicate in the form of a memorandum, setting forth concisely the grounds of objection to the order appealed against and shall be accompanied by that order or a certified copy thereof. Sub-Section(3) provides that on receipt of such appeal, the Appellate Authority may, after giving a reasonable opportunity to the appellant to be heard either personally or by a counsel and after such further inquiry, if any, as it may deem necessary, confirm, vary or set aside the order appealed against(Emphasis supplied).

7. A right to appeal has always been considered as a substantive right and unless it is specifically provided it cannot be exercised. The Act does not make any provision for revision by the State Government, to test the correctness of the orders passed by the District Magistrates in exercise of their powers

under Section 3 or 4 of the Act. As already seen, the expression "person" and "State Government" have been defined in Clauses (c) and (d) of sub-section(1) of Section 2 of the Act respectively. The expression any person aggrieved by an order, appearing in sub-section(1) of Section 7 could be only the person as defined by Clause (c) of sub-section(1) of Section 2 of the Act and certainly it could not refer to the expression "State Government" appearing in Clause (d) of sub-section(1) of Section 2. Orders under Sections 3 and 4 can be made only against persons as defined under Section2(1)(c) and it is only such person/s who could be aggrieved and who can file appeals under Section 7 of the Act. That apart, an appeal is provided to the State Government and it cannot be said that the State Government can file an appeal to itself. As rightly submitted on behalf of the petitioner, it is only the person as defined in Clause (c) of sub-section(1) of Section 2 who could be aggrieved by an order made and it is only such person who could file an appeal. In my view, the Superintendent of Police cannot be included within the definition of "person" as contemplated by Clause (c) of sub-section(1) of Section 2 and therefore the appeal filed by him was clearly not maintainable. It may also be stated that the

maintenance of public order and safety is primarily the duty of the District Magistrate and in the absence of any provision for appeal by the Police against such orders or revisional jurisdiction given to the State Government, such an order had to be considered to be final being not amenable to appeal at the behest of the Police.

7. Consequently, the Writ Petition deserves to succeed. The impugned Order dated 19-9-2006 is hereby set aside for want of jurisdiction.

N. A. BRITTO, J.

RD